

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.46100 of 2006
RAJESHWAR PRASAD
Versus
STATE OF BIHAR & ANR

For the petitioner : Mr. Rana Pratap Singh, Sr. Adv.,
: Mr. Sumant Singh, Adv.,
For the opposite party : Mr. Vinay kirti Singh, Adv.,
For the State : Mr. Gopesh Kumar, App.

5. 13.5.2008. This application under Section 482 Cr.P.C. has been filed to quash the order dated 26th August 2006 passed by Sri Krishna Sinha, Ist Additional Sessions Judge, Saran at Chapra in Cr. Revision No. 210 of 2003 whereby and whereunder learned court has set aside the order dated 21.5.2003 passed by Chief Judicial Magistrate, Saran at Chapra in Bhagwan Bazar P. S. Case No. 114 of 2002 accepting the final form submitted by I.O.

Heard learned counsel for the petitioner as well as the opposite party no. 2.

The only submission of learned counsel for the petitioner is that the order for further enquiry has been passed in Cr. Revision without hearing or impleading the petitioner as opposite party.

It is further submitted that since one order has been passed in favour of petitioner accepting the final form submitted by the police, it was obligatory on the part of revisional court to issue notice to accused-petitioner giving an opportunity of hearing to them. Admittedly, no notice had been given to the accused-petitioner and in absence of accused-petitioner impugned order has been passed.

Learned counsel for the opposite party no. 2 has also admitted that no notice had been issued to the petitioner and the impugned order has been passed in absence of petitioner. But it is submitted that notice to the petitioner was not required as cognizance has not been taken against him. Therefore, he is not in the category of accused.

Considered the submission of learned counsel for both the parties as well as a decision of Hon'ble Apex Court reported in 2001 Cr. L. J. 122: Bhagirath vs. Kana Ram & another.

I have also considered Section 398 of Criminal Procedure Code. In proviso of Section 398 it has specifically been mentioned that in such nature of cases notice should be issued to the persons against whom order is being passed for further enquiry.

Thus, having regard to the facts and circumstances of the case, this application is allowed. Impugned order dated 26th August 2006 passed by Sri Krishna Sinha, Ist Additional Sessions Judge, Saran at Chapra in Cr. Revision No. 210 of 2003 is, hereby, quashed. The matter is remitted back to the revisional court for rehearing and afresh decision after issuing notice to the accused persons including this petitioner.

kanchan

(Ghanshyam Prasad, J.)